

DEC 22 1983

No. 83-896

ALEXANDER L. STEVAS,
CLERK

IN THE SUPREME COURT OF THE
UNITED STATES
October Term, 1983

GARY L. SHIVELY, Petitioner,

-VS-

UNITED STATES OF AMERICA.

SUPPLEMENTAL APPENDIX

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SUPPLEMENTAL APPENDIX

Table Of Contents	<u>Page</u>
Judgment of the United States Court of Appeals for the Seventh Circuit, Dated Aug. 8, 1983.....	1
Order of the United States Court of Appeals for the Seventh Circuit, denying rehearing request of Defendant, Gary L. Shively, dated October 5, 1983.....	3
U. S. District Court for the Southern District of Illinois Order for pre-trial discovery and inspection, filed Feb. 26, 1982.....	5
Affidavit of Wilburn Kincaid, filed Nov. 16, 1981 and sealed by Order of the U. S. District Court.....	10

Opinion by Judge Posner

JUDGMENT - ORAL ARGUMENT

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

August 8, 1983

Before

Hon. Richard D. Cudahy, Circuit
Judge

Hon. Richard A. Posner, Circuit
Judge

Hon. Max Rosenn, Senior Circuit *
Judge

UNITED STATES OF	)	Appeals from the
AMERICA,	)	United States
Plaintiff-Appellee,	)	District Court
Nos. 82-2192	)	for the Southern
82-2436	)	District of
vs.	)	Illinois, Benton
GARY L. SHIVELY and	)	Division
G. WINFIELD PARDEE,	)	No. 82-CR-40005
Defendant-Appellant.	)	Judge James L.
	)	Foreman

This cause was heard on the record
from the United States District Court
for the Southern District of Illinois,
Benton Division, and was argued by
counsel.

On consideration whereof, IT IS

ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby AFFIRMED in part, REVERSED in part, and the case is REMANDED, in accordance with the opinion of this Court filed this date.

* The Honorable Max Rosenn, Senior Circuit Judge of the United States Court of Appeals for the Third Circuit, is sitting by designation.

UNITED STATES COURT OF APPEALS

For The Seventh Circuit
Chicago, Illinois 60604

October 5, 1983

Before

Hon. Richard D. Cudahy, Circuit
Judge
Hon. Richard A. Posner, Circuit
Judge
Hon. Max Rosenn, Senior Circuit
Judge*

UNITED STATES OF	)	Appeal from
AMERICA,	)	the United
Plaintiff-Appellee,	)	States District
No. 82-2192	)	Court for the
vs.	)	Southern District
GARY L. SHIVELY,	)	of Illinois,
Defendant-Appellant.	)	Benton Division.
		No. 82-CR-40005
		James L. Foreman,
		<u>Judge.</u>

ORDER

On August 24, 1983, defendant-
appellant Gary L. Shively filed a

*Hon. Max Rosenn of the Third Circuit,
sitting by designation.

petition for rehearing. All of the judges on the original panel have voted to deny the rehearing. The petition is therefore DENIED.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF ILLINOIS

UNITED STATES OF	)	Crim. No.
AMERICA,	)	82-40005-01
Plaintiff,	)	"Filed
-vs-	)	Feb. 26, 1982"
)	
GARY L. SHIVELY,)	
Defendant.)	

ORDER FOR PRETRIAL DISCOVERY AND
INSPECTION

IR IT HEREBY ORDERED by the Court that:

(1) Within five (5) days after
the arraignment in the above entitled
cause, the United States Attorney and
the Defendant's attorney shall confer
and, upon request, the government shall

(a) Permit Defendant's attorney
to inspect and copy or photograph
any relevant written or recorded
statements or confessions made
by the defendant, or copies
thereof, within the possession,
custody or control of the
government, the existence of
which is known, or by the exercise
of due diligence may become
known, to the attorney for the
government;

(b) Permit Defendant's attorney to inspect and copy or photograph any relevant results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the case, or copies thereof, within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known to the attorney for the government;

(c) Permit Defendant's attorney to inspect and copy or photograph any relevant recorded testimony of the Defendant before a grand jury;

(d) Permit Defendant's attorney to inspect and copy or photograph books, papers, documents, tangible objects, buildings, or places which are the property of the Defendant and which are within the possession, custody, or control of the government;

(e) Permit Defendant's attorney to inspect and copy or photograph the Federal Bureau of Investigation Sheet indicating Defendant's prior criminal record;

(f) Permit Defendant's attorney to inspect, copy or photograph any evidence favorable to the Defendant.

(2) If, in the judgment of the United States Attorney, it would not be

in the interest of justice to make any one or more disclosures as set forth in paragraph (1) as requested by Defendant's counsel, disclosure may be declined. A declination of any requested disclosure shall be in writing, directed to Defendant's counsel, and signed personally by the United States Attorney or the First Assistant United States Attorney, and shall specify the types of disclosures that are declined. If the Defendant seeks to challenge the declination, he shall proceed pursuant to subsection (3) below:

(3) If additional discovery or inspection is sought, Defendant's attorney shall confer with the appropriate Assistant United States Attorney within ten (10) days of the arraignment with a view to satisfying these requests in a cooperative atmosphere without recourse to the Court. The request may

be oral or written and the United States Attorney shall respond in like manner.

(4) In the event Defendant thereafter moves for additional discovery or inspection, the motion supported by a brief shall be filed within ten (10) days of the arraignment. It shall contain:

a--the statement that the prescribed conference was held;

b--the date of said conference;

c--the name of the Assistant United States Attorney with whom conference was held; and

d--the statement that agreement could not be reached concerning the discovery or inspection that is the subject of Defendant's motion.

(5) Any duty of disclosure and discovery set forth above is a continuing one and the United States Attorney shall produce any additional information gained by the government.

(6) Any disclosure granted by

the government pursuant to this Order of material within the purview of Rules 16(a) and 16(b), Federal Rules of Criminal Procedure, shall be considered as relief sought by the Defendant and granted by the Court.

(7) In the event Defendant desires to file any other motion, his motion supported by a brief or memorandum of law shall be filed within ten (10) days from the date of the filing of Defendant's motion to reply supported by a brief or memorandum of law.

(8) All motions shall be filed in duplicate with the Clerk and in addition a copy thereof shall be served on all counsel of record. Proof of service by mail or otherwise shall appear on the motion.

Dated February 26, 1982

/s/ Kenneth J. Meyers
United States Magistrate
Southern District of
Illinois

"Filed Nov. 16, 1981"

STATE OF ILLINOIS)
) SS.
COUNTY OF ST. CLAIR)

A F F I D A V I T

WILBURN R. KINCAID, being duly sworn,
deposes and says:

1. That he is a Special Agent with the Federal Bureau of Investigation investigating bank fraud and embezzlement involving the First National Bank of Marshall, Marshall, Illinois.

2. That Gary L. Shively is a target of the investigation and has previously provided certain handwriting specimens to the Grand Jury which were forwarded to a Handwriting Examiner with the Federal Bureau of Investigation in Washington, D.C.

3. The Handwriting Examiner has informed him that the handwriting specimens furnished by Gary L. Shively have unexplained distortions and the

specimens may indicate an attempt to conceal true handwriting.

4. Additional handwriting is needed to identify the writer or writers of crucial documents and the additional handwriting is not being sought for harassment purposes.

/s/ William R. Kincaid

Subscribed and sworn to before me this
16th day of November, 1981.

/s/ Joanne M. Riassetto
Notary Public